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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------------|
| 09/854,560 | 05/15/2001 | Hans Berger | 66376-252-7 | 8137 |
| <div>25269 7590 09/27/2007</div> <div>DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005</div> | | | | |
| | | | EXAMINER O'CONNOR, GERALD J | |
| | | | ART UNIT 3627 | PAPER NUMBER |
| | | | MAIL DATE 09/27/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/854,560

Applicant(s)

Berger et al.

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 29, 2007 (Amdt).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 31 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 15, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the amendment and arguments filed by applicant on June 29, 2007 in reply to the previous Office action on the merits, mailed January 29, 2007.
2. The amendment of claims 1 and 31 by applicant in the reply filed on June 29, 2007 is hereby acknowledged.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al. (US 5,305,199), in view of Namismiak et al. (US 5,711,160).

Lobiondo discloses a method for automation of the management of operating materials and/or supplies of an analyzer or analyzing system for determining a parameter or a parameter group of a sample, being used in medical, environmental or food technology, said operating materials being tagged as to types and maximum useful lives and said required supplies being as

to types, expiry dates and quantities, comprising: entering a desired frequency of analysis, or automatic calculation of an estimated frequency of analysis from past frequencies of use of said analyzer or analyzing system (see fig. 3, projected usage), automatically calculating an amount of said operating materials and/or supplies required per unit of time, based on data obtained in steps (a) and (b) (col. 3, line 67 to col. 4, line 4), determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the maximum useful lives of said required operating materials, the expiry dates and quantities of said required supplies (col. 4, lines 4-9, 39-49), automatically ordering of said operating materials and/or supplies via a device for remote data transmission (col. 4, lines 17-23). Furthermore, Lobiondo discloses a method wherein said operating materials and/or supplies are ordered via an internet connection and wherein said unit for remote data transmission is used to provide an internet portal for information on products, software, service, maintenance, and use, in the fields of medical and food technology (col. 3, lines 16-31). Lobiondo does not explicitly disclose an automatic detecting and recording of useful lives but Namismiak discloses an automatic detecting and recording said types and maximum useful lives of said required operating materials, and said types, expiry dates and quantities of said required supplies (col. 6, lines 10-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic means as taught by Namismiak into the method of Lobiondo because it would provide a warning when a food item is approaching or has reached the end of

its useful lifetime and to provide a quick and simple way to locate a food item stored inside a crowded refrigerator.

5. Claims 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al. (US 5,305,199), in view of Namismiak et al. (US 5,711,160), and further in view of Sano et al. (US 5,415,840).

Lobiondo et al further teach updating information on product using a software, expected delivery and shipment information that can be transmitted via a link (col. 3, lines 20-24 and lines 42-46).

Neither Lobiondo nor Namismiak teaches an analyzing system for determining medical sample parameters but Sano et al teach a system for determining medical sample wherein said connection for remote data transmission is provided in a computer central unit of said analyzing system (fig. 1), the analyzer is coupled to the central unit as claimed and can be removed to be inserted in a different position.(col. 4, lines 42-48), said analyzing system is capable of being provided with a sample bus to exchange the samples to be tested between the analyzer and the control unit (col. 4, lines 1-13).

Neither Lobiondo nor Namismiak nor Sano expressly teaches exchanging washing, calibrating and quality control media between analyzer and the control unit but this feature is obvious in the medical field because the system as taught by Sano et al intrinsically would have to do at least some washing, calibrating and quality control media in order to have any kind of

exchange between these two elements and also to ensure the reliability of the equipment in use to perform a certain test.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic means as taught by Namismiak into the method of Lobiondo because it would provide a warning when a food item is approaching or has reached the end of its useful lifetime and to provide a quick and simple way to locate a food item stored inside a crowded refrigerator. And it would have been obvious to one of ordinary skill in the art to utilize the automatic analyzer as taught by Sano into the combined systems of Lobiondo and Namismiak because it would enable measurement to be performed with simple mechanisms and good reproducibility.

Response to Arguments

6. Applicant's arguments filed June 29, 2007 have been fully considered but they are not deemed persuasive.

7. Regarding the arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

8. Regarding the arguments concerning recitations in the preamble of the claims, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

9. To the extent that applicant is arguing that the disclosure in the applied prior art is not in as complete detail as is recited by the instant claims, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings *in combination with his own knowledge* of the particular art and be in possession of the invention. *In re Graves*, 36 USPQ2d 1697 (Fed. Cir. 1995); *In re Sasse*, 207 USPQ 107 (CCPA 1980); *In re Samour*, 197 USPQ 1 (CCPA 1978).

10. To the extent that applicant is arguing that the references applied in the rejection fail to use the same names for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but ***need not be in the identical words*** as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to the disclosure.

12. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is (571) 272-6787, and whose facsimile number is (571) 273-6787.

Official replies to this Office action may now be submitted electronically by registered users of the EFS-Web system. Information on EFS-Web tools is available on the Internet at: <http://www.uspto.gov/ebc/portal/tools.htm>. An EFS-Web Quick-Start Guide is available at: <http://www.uspto.gov/ebc/portal/efs/quick-start.pdf>.

Alternatively, official replies to this Office action may still be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies should be directed to the central fax at (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

September 17, 2007

 9/17/07

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627